

1
2 UNITED STATES DISTRICT COURT
3 EASTERN DISTRICT OF NEW YORK
4 Index No. 2:09-CV-02254

5 -----x
6 CANDACE HARPER, Individually and on Behalf
7 of All Other Persons Similarly Situated,
8 Plaintiff,

9 - against -

10
11 GOVERNMENT EMPLOYEES INSURANCE COMPANY
12 a/k/a GEICO,

13 Defendant.

14 -----x
15 March 24, 2010
16 10:10 a.m.

17 Deposition of JOHN W. PHAM, taken by
18 Plaintiff, pursuant to Notice, held at the
19 offices of Dorsey & Whitney LLP, 250 Park
20 Avenue, New York, New York, before Todd
21 DeSimone, a Registered Professional
22 Reporter and Notary Public of the State of
23 New York.
24
25

A P P E A R A N C E S :

KLAFTER OLSEN & LESSER LLP

Two International Drive

Suite 350

Rye Brook, New York 10573

Attorneys for Plaintiff

BY: FRAN RUDICH, ESQ.

frudich@klafterolsen.com

LANA KOROLEVA, ESQ.

lkoroleva@klafterolsen.com

SHAW ROSENTHAL LLP

20 South Charles Street

11th Floor

Baltimore, Maryland 21201

Attorneys for Defendant

BY: ERIC HEMMENDINGER, ESQ.

eh@shawe.com

DORSEY & WHITNEY LLP

250 Park Avenue

New York, New York 10177

Attorneys for Defendant

BY: LAURA M. LESTRADE, ESQ.

lestrade.laura@dorsey.com

ALSO PRESENT:

WILLIAM C.E. ROBINSON, GEICO

MARLENE HARRIS-GRANT, GEICO

1 J. PHAM

2 J O H N W. P H A M,
3 called as a witness, having been first
4 duly sworn, was examined and testified
5 as follows:

6 EXAMINATION BY MS. RUDICH:

7 Q. Good morning, Mr. Pham. My
8 name is Fran Rudich. I'm an attorney for
9 Candace Harper in a case that is pending
10 in the Eastern District of New York
11 against GEICO.

12 I'm going to be asking you some
13 questions this morning in connection with
14 that case. If you don't understand a
15 question, please let me know, and I will
16 try to rephrase it. If you don't hear a
17 question, please also let me know, and I
18 will have the court reporter, the
19 gentleman who is sitting to your right,
20 will read it back to you.

21 Because the court reporter is
22 taking down everything that is said in
23 this room today when we are on the record,
24 I would appreciate it if you just wait for
25 me to finish my questions before you

1 J. PHAM

2 answer, because I'm sure you are going to
3 be anticipating what the questions are,
4 and it is human nature to just answer.

5 But in order for us to get a
6 clear record of the deposition here today,
7 it is important for you to wait for me to
8 finish the question and we don't talk on
9 top of each other. Okay?

10 A. Okay.

11 Q. Also, make sure -- I would like
12 you to answer all of my questions
13 verbally. Even though you might want to
14 shake your head or nod your head or shrug
15 your shoulders, again, the court reporter
16 can't take all of that down. So make sure
17 that you answer all of the questions
18 verbally.

19 A. Okay.

20 Q. This is not a forced march. I
21 don't want you to think you are stuck in
22 this room. If you need to take a break,
23 let me know or your attorney know, and I
24 will be happy to accommodate you.

25 A. Thank you.

1 J. PHAM

2 Q. Please state your name for the
3 record.

4 A. John Pham.

5 Q. And you are appearing today on
6 behalf of GEICO, correct?

7 A. Yes.

8 Q. So what is your business
9 address?

10 A. 750 Woodbury Road, Woodbury,
11 New York, 11797.

12 MS. RUDICH: Off the record.

13 (Discussion off the record.)

14 BY MS. RUDICH:

15 Q. Are you employed, Mr. Pham?

16 A. Yes.

17 Q. Who is your employer?

18 A. GEICO.

19 Q. And what is your current title?

20 A. Assistant vice president of
21 Claims for Region II.

22 Q. What is Region II?

23 A. Region II is the profit center
24 at GEICO responsible for the State of New
25 York.

1 J. PHAM

2 Q. When you say "profit center,"
3 what do you mean by "profit center"?

4 A. We are responsible for all of
5 the business activity of GEICO in the
6 state of New York.

7 Q. And what are your duties and
8 responsibilities as assistant vice
9 president of Claims for Region II?

10 A. I'm responsible for all claims
11 activity in the state of New York.

12 Q. For a layperson who knows much
13 less than you, what does it mean to be
14 responsible for all claims activity in New
15 York?

16 A. We sell car insurance at GEICO.
17 That's the product that we sell. As part
18 of that product, when our customers have a
19 claim, we resolve that claim for them. I
20 am responsible for the resolution of
21 claims should they arise from the issuance
22 of a policy in New York.

23 Q. Are you represented by counsel
24 here today?

25 A. Yes.

1 J. PHAM

2 Q. And who is your counsel?

3 A. Eric Hemmendinger.

4 Q. Do you understand that you've
5 been designated as a witness to testify on
6 behalf of GEICO with respect to certain
7 topics or certain issues?

8 A. Yes.

9 Q. Are you on any medications here
10 today?

11 A. No.

12 Q. Are you suffering from any
13 illnesses that might impair your ability
14 to testify?

15 A. No.

16 Q. Did you prepare in any way for
17 today's deposition?

18 A. Yes.

19 Q. And what did you do to prepare?

20 A. I read over my answers to
21 interrogatories and I met with my attorney
22 to go over, I think there was an exhibit
23 that you gave him of questions that are
24 generally asked.

25 Q. I think it was the topic -- was

1 J. PHAM

2 it like a list of topics that were
3 going -- I will make this easier.

4 MS. RUDICH: I'm going to ask
5 that this next document be marked as Pham
6 Exhibit 1. It is the notice of deposition
7 pursuant to Federal Rule of Procedure
8 30(b)(6) that has been served on
9 defendants in this case.

10 (Pham Exhibit 1 marked for
11 identification.)

12 Q. Mr. Pham, please take a look at
13 what has been marked as Pham Exhibit 1.

14 (Witness perusing document.)

15 Q. Have you ever seen this
16 document before?

17 A. Yes. This is the document that
18 I was referring to in my answer to your
19 prior question.

20 Q. So the list that is set forth
21 on Exhibit A was the list that you were
22 referring to in your previous testimony?

23 A. Yes.

24 Q. Now, do you know which topics
25 you have been designated as a witness to

1 J. PHAM

2 testify on behalf of GEICO by number?

3 A. No.

4 MS. RUDICH: Mr. Hemmendinger,
5 would you like to --

6 MR. HEMMENDINGER: He is the
7 only corporate designee witness that we
8 have designated. I think he is able to
9 cover everything to a reasonable degree of
10 depth. If we end up having to get real
11 technical about a computer program --

12 MS. RUDICH: I just wanted to
13 make sure -- off the record.

14 (Discussion off the record.)

15 BY MS. RUDICH:

16 Q. How long have you worked for
17 GEICO?

18 A. It will be 20 years this June.

19 Q. Can you just give me a list,
20 chronologically, of the titles that you
21 have held at GEICO starting from the
22 earliest to the present?

23 A. I can try.

24 Q. I don't need the exact dates,
25 just the dates and titles.

1 J. PHAM

2 A. I started as a management
3 intern. The management intern position, I
4 rotated through any number of technical
5 positions in Claims and Underwriting.

6 Upon completion of the
7 management intern program, I became a TA2
8 examiner. Then I became a continuing unit
9 examiner. Then I became a supervisor in
10 Auto Damage. Then I was assistant manager
11 in CSR. Then I was a manager in Sales.
12 Then a director in Sales. Then I was the
13 director of our Motorcycle operation.
14 Then I was the sales process coordinator.
15 Then assistant vice president of Claims.

16 Q. What was the time period that
17 you held the position of TA2?

18 A. I'm not sure. Probably -- I
19 graduated in 1990, so it would have been
20 somewhere between '92 and '94 maybe.

21 MR. HEMMENDINGER: John, the
22 court reporter could speak for himself,
23 but I wasn't sure what part of that you
24 intended to be on the record and which
25 part you were thinking out loud.

1 J. PHAM

2 A. I would say I'm not sure.

3 Q. Now, you said that you were a
4 supervisor in Auto Damage. What years did
5 you hold the position of supervisor in
6 Auto Damage?

7 A. I don't recall.

8 Q. And what were your duties and
9 responsibilities as a supervisor in Auto
10 Damage?

11 A. I was a supervisor of a
12 clerical bill-paying unit. We paid the
13 glass -- bills for glass claims and for
14 towing claims.

15 Q. When were you the assistant
16 manager in CSR?

17 A. I don't recall.

18 Q. What does CSR stand for?

19 A. CSR stands for claims service
20 representative.

21 Q. What were your duties and
22 responsibilities as assistant manager in
23 CSR?

24 A. I was to assist in running --
25 it is basically the telephone area where

1 J. PHAM

2 loss reports are received.

3 Q. When you say "the telephone
4 area where loss reports are received," do
5 you mean the area -- the people who
6 receive the initial phone call reporting
7 some type of accident or loss or incident?

8 A. That's correct.

9 I forgot, I also held the
10 position of -- I was a Glass manager
11 before I was in Sales, between CSR and
12 Sales.

13 Q. And what were your duties and
14 responsibilities as a Glass manager?

15 A. I was responsible for starting
16 a unit that handled glass claims
17 countrywide.

18 Q. And then what years did you
19 hold the position of manager in Sales?

20 A. I don't recall.

21 Q. And what were your duties and
22 responsibilities?

23 A. I was responsible for the
24 agents who were selling new policies for
25 GEICO on the phone.

1 J. PHAM

2 Q. Does GEICO only sell car
3 insurance or do they have other type of
4 homeowner's or umbrella policies, things
5 like that?

6 A. GEICO sells primarily car
7 insurance. We do also sell other
8 products, homeowner's insurance. We don't
9 sell life insurance, renter's insurance
10 through an agency. Most of our business
11 is done auto. My positions all only
12 related to automobile insurance.

13 Q. And that's done directly
14 through the company, they don't have
15 agents for that, for GEICO?

16 I'm sorry, I interrupted you.
17 I apologize.

18 A. Which is?

19 Q. Is automobile sold through
20 agents or directly through the company?

21 A. We have a small portion of what
22 I guess people would consider captive
23 agents. We call them GEICO field
24 representatives.

25 Q. When did you hold the position

1 J. PHAM

2 of director of Sales?

3 A. I don't recall.

4 Q. And what was your duties and
5 responsibilities in that position?

6 A. In that position, I had to
7 oversee all of the sales operations and
8 had several managers reporting to me, auto
9 sales, on the phone.

10 Q. And was this for a particular
11 region or for the country?

12 A. This was for Region I.

13 Q. And what is Region I?

14 A. Region I at that time was
15 responsible for, if I recall correctly,
16 Maryland, Virginia, D.C., West Virginia,
17 and Delaware.

18 Q. And when were you the director
19 of Motorcycle Operations?

20 A. I don't recall the specific
21 dates.

22 Q. What were your duties and
23 responsibilities as a director of
24 Motorcycle Operations?

25 A. I was responsible for sales,

1 J. PHAM

2 service, and underwriting for motorcycle
3 insurance countrywide.

4 Q. And when did you hold the
5 position of sales process coordinator?

6 A. I don't recall specific dates.

7 Q. Do you recall the years?

8 A. No.

9 Q. And what were your duties and
10 responsibilities as a sales process
11 coordinator?

12 A. I was responsible for
13 implementing Lean Six Sigma in the sales
14 process at GEICO.

15 Q. Lean Six Sigma?

16 A. Correct.

17 Q. I know Six Sigma is a type
18 of -- it is -- what is Six Sigma?

19 A. Six Sigma is basically a method
20 for improving processes.

21 Q. So can you describe what the
22 Lean Six Sigma is?

23 A. Sure, I can try it. How much
24 time do you have?

25 Q. Give me the abridged,

1 J. PHAM

2 condensed, stupid person's version.

3 A. Lean thinking basically is also
4 designed to improve processes. So Lean
5 and Six Sigma, what you are looking to do
6 is to be able to solve problems for the
7 business and design processes that result
8 in doing things better, faster, and
9 cheaper.

10 Q. Now, when you say "lean," are
11 you talking about l-e-a-n?

12 A. Yes.

13 Q. So you are not talking about
14 liens, like legal liens?

15 A. No, not at all.

16 Q. Now I understand.

17 And how long have you held the
18 position of assistant VP of Claims?

19 A. Since 2005.

20 Q. Have you held the position of
21 assistant VP of Claims continuously from
22 2005 to today?

23 A. Yes.

24 Q. Now, what are your duties --
25 what are TCRs?

1 J. PHAM

2 A. TCRs stands for telephone claim
3 representative.

4 Q. And what are your duties as
5 assistant VP of Claims as they relate
6 to -- I'm going to withdraw that question.

7 How many different TCR
8 positions are there in GEICO?

9 A. We have telephone claim
10 representative I's and telephone claim
11 representative II's.

12 Q. Now, did you ever hear of a job
13 called TA examiner I and TA examiner II?

14 A. Yes.

15 Q. What is a TA examiner I?

16 A. It is the same as a telephone
17 claims representative I.

18 Q. And what is a TA examiner II?

19 A. The same as a telephone claims
20 representative II.

21 Q. It is just a different name for
22 the same job?

23 A. Yes.

24 Q. Just to make it confusing.

25 What does TA stand for?

1 J. PHAM

2 A. Telephone adjuster.

3 Q. What are the duties and
4 responsibilities of a TCR I or a TA
5 examiner I, are they the same?

6 A. Yes, they are the same.

7 Q. So what are their
8 responsibilities?

9 A. I think I answered that in the
10 answer to interrogatories.

11 Q. But even though you might have
12 answered the question in interrogatories,
13 I'm still allowed to ask you the same
14 questions or related questions here.

15 A. Okay. Could I see how I
16 answered the question?

17 Q. No. I would like you to just
18 answer the question.

19 A. Okay.

20 TCR I's essentially investigate
21 and resolve coverage for claims involving
22 property damage and not bodily injury
23 where there is some question as to
24 liability.

25 Q. What do you mean by "where

1 J. PHAM

2 there is some question as to liability"?

3 A. There is some dispute as to who
4 is at fault in the accident.

5 Q. Now, who handles claims in
6 which there is no question of liability --
7 withdrawn.

8 What position handles claims,
9 property damage claims, where there is no
10 question of liability?

11 A. In most cases, CSRs.

12 Q. And what does CSR stand for?

13 A. Claim service representative.

14 Q. Now, is there a division or a
15 group in which TCR I and II and CSR work
16 in? Is it referred to in any way within
17 GEICO?

18 A. I'm not sure I understand the
19 question.

20 Q. If I was to say what group or
21 what division do CSRs work in, would it be
22 Claims Handling, would it be Claims
23 Administration, would it be Claims?

24 A. It depends on the region in
25 some cases. But usually they would all be

1 J. PHAM

2 in the Claim Department. Then within the
3 Claim Department, depending on the region,
4 usually it would be in the Liability
5 Division.

6 Q. And what other divisions are
7 there within the Claims Department?

8 A. That depends on the region.

9 Q. So how many regions are there?

10 A. Eight.

11 Q. Let's start, so what states
12 does Region I cover?

13 A. I'm not sure specifically now.
14 We moved states from regions to regions.
15 I'm focused only on New York at this time.

16 Q. When did the readjustment or
17 realignment occur?

18 A. It happens from time to time as
19 the business needs dictate. I think the
20 last regional alignment -- we just moved
21 states between regions out west starting
22 in January of this year.

23 Q. So you are not sure what states
24 are in Region I?

25 A. Correct.

1 J. PHAM

2 Q. Are there any documents that
3 would reflect which states are in Region
4 I?

5 A. I'm not sure. There might be.
6 Yeah, I would assume there should be.

7 Q. Have you ever seen like an org
8 chart or a corporate tree or hierarchical
9 chart which would list the regions by
10 state?

11 A. Yes, we have one on our
12 DirectNet site, which states are assigned
13 to which profit center.

14 Q. So are regions called profit
15 centers?

16 A. Generally, yes. There could be
17 profit centers of certain states within a
18 region.

19 Q. Now, what is a DirectNet site?

20 A. We have an internal Internet
21 system.

22 Q. Does it have a name? DirectNet
23 is the name of it?

24 A. I believe the name has changed
25 to Genie. It used to be called DirectNet.

1 J. PHAM

2 Q. And when was it changed?

3 A. I don't recall.

4 Q. So there would be a place on
5 the DirectNet site, or Genie, that would
6 list the different regions and which
7 states are comprised within those regions?

8 A. Yes, I believe so.

9 Q. Now, you said that in most
10 regions there is a Claim Department. What
11 other departments would there be in a
12 region?

13 A. Underwriting. The Claims and
14 Underwriting are the two largest
15 departments.

16 Q. Are there any other smaller
17 departments?

18 A. Yes. You have -- in some
19 regions you will have a Planning
20 Department. In some regions you will have
21 a Facilities area. In some regions you
22 have a mailroom, which would report to
23 Facilities or Planning.

24 Q. Do all regions have Claims
25 Departments and Underwriting Departments?

1 J. PHAM

2 A. Yes.

3 Q. So some regions might have
4 these other smaller departments?

5 A. Yes.

6 Q. What is Region II?

7 A. I'm not sure I understand.

8 Q. What states comprise Region II?

9 A. New York.

10 Q. Just New York?

11 A. Yes.

12 Q. How about Region III?

13 A. I don't recall the specific
14 states. I know it has two profit centers
15 in Region III, mainly midwest states and
16 southeast states.

17 Q. How about Region IV?

18 A. Region IV has western states,
19 California and I think Hawaii. It also
20 has an additional profit center
21 responsible for Arizona and some of the
22 other western states.

23 Q. And that's part of Region IV?

24 A. Yes.

25 Q. How about Region V?

1 J. PHAM

2 A. Texas and some of the western
3 states there, I think Colorado.

4 Q. And Region VI?

5 A. Region VI is Florida.

6 Q. Region VII?

7 A. Virginia and North Carolina.

8 Q. And Region VIII?

9 A. New Jersey and the New England
10 states.

11 Q. Now, within the Claims
12 Department, how many different departments
13 or groups are there within a Claims
14 Department?

15 A. Which one?

16 Q. Let's start with New York.

17 A. I have three divisions in New
18 York: Liability, Auto Damage, and PIP, or
19 No-Fault.

20 Q. So PIP means no-fault?

21 A. Yes, personal injury
22 protection.

23 Q. Now, within these three groups
24 in New York, which group would the TCR I
25 and II work in?

1 J. PHAM

2 A. Liability.

3 Q. Are there any other positions
4 that work within Liability?

5 A. Yes.

6 Q. And what are they?

7 A. Continuing unit examiners and
8 total theft examiners. And CSR, I think I
9 said that.

10 Q. And that is CSRs I and II?

11 A. Yes, CSRs I and II.

12 Q. And it is TCR I and II,
13 correct?

14 A. Correct.

15 Q. Are there any different levels
16 within the continuing unit examiners?

17 A. Yes.

18 Q. And what are they?

19 A. I don't recall specifically.
20 There is a level I and a level II
21 examiner, based on grade.

22 Q. And how about, are there
23 different levels for total theft
24 examiners?

25 A. Not that I'm aware of.

1 J. PHAM

2 Q. So there is just one?

3 A. Yes.

4 Q. Now, do you know how many
5 other -- how many offices within the
6 different regions of GEICO do TCRs work
7 in?

8 A. I'm not sure specifically. It
9 is more than there are regions.

10 Q. Can you list the offices that
11 TCRs work in?

12 A. I would say it is Region I,
13 Region II, Region III, both midwest and
14 southeast, Region IV, Region V, Region VI,
15 Region VII, Region VIII, Hawaii, Tuscon, I
16 think Seattle, Marlton, New Jersey, and
17 I'm not sure about any others.

18 Q. To prepare for your deposition
19 here today, did you ask anybody how many
20 offices TCRs work in?

21 A. I read through my answers to
22 interrogatories, and I think it is in
23 there.

24 Q. I think you said that in Region
25 III there is one in both the midwest and

1 J. PHAM

2 the southeast?

3 A. Correct.

4 Q. Today how many TCRs does GEICO
5 employ?

6 A. I don't know.

7 Q. Is there any documents that
8 would reflect that?

9 A. I'm not sure. I would imagine
10 there is a payroll system that would be
11 able to tell us how many we have on the
12 books. The number fluctuates, obviously,
13 with turnover.

14 MR. HEMMENDINGER: Counsel, do
15 you mind if I say something?

16 MS. RUDICH: Sure.

17 MR. HEMMENDINGER: We provided
18 that information in the answer to
19 interrogatory.

20 MS. RUDICH: I'm allowed to ask
21 him.

22 MR. HEMMENDINGER: I understand
23 that. I don't want the record to reflect
24 we were unresponsive to your request. It
25 is just that some things are hard to

1 J. PHAM

2 memorize. That's why we wrote it all
3 down.

4 MS. RUDICH: As of now, I'm not
5 going to be saying that he is not a good
6 30(b)(6) witness.

7 MR. HEMMENDINGER: All right.

8 MS. RUDICH: And I appreciate
9 your letting me know it is in the
10 interrogatories. Thank you.

11 Q. Who do you report to today?

12 A. Seth Ingall.

13 Q. And what's his position?

14 A. Regional vice president.

15 Q. Who does Mr. Ingall report to?

16 A. Tony Nicely.

17 Q. And what is his position?

18 A. CEO.

19 Q. Is that CEO of GEICO or just
20 your region?

21 A. It is CEO of GEICO and chairman
22 of the board as well.

23 Q. So is Mr. Ingall the highest
24 position within Region I?

25 A. No.

1 J. PHAM

2 Q. Region II?

3 A. Yes.

4 Q. I'm going to use a
5 colloquialism. Is the top person, the top
6 guy in each region, a regional vice
7 president?

8 A. Yes.

9 Q. And your position is assistant
10 VP of Claims, correct?

11 A. Yes.

12 Q. Are there any other assistant
13 VPs within the Region II?

14 A. Yes.

15 Q. And how many?

16 A. One.

17 Q. And who is that?

18 A. Rod Curran.

19 Q. What is his title?

20 A. Assistant vice president of
21 Underwriting.

22 Q. He is in charge of the
23 underwriting part of Region II, correct?

24 A. That's correct.

25 Q. And colloquially, you are in

1 J. PHAM

2 charge of the liability part of Region II,
3 correct?

4 A. Yes.

5 Q. Does each region in which there
6 is an Underwriting Department have an
7 assistant VP in charge of it?

8 A. No, not necessarily.

9 Q. So in each region, who would be
10 the -- in the regions that do not have the
11 position of assistant VP for Underwriting,
12 who would be in charge of the
13 underwriting?

14 A. The regional vice president
15 would be responsible for it. He might
16 have directors at the various levels who
17 report directly to him.

18 Q. How about for all the regions
19 that have a Claims Department, do they all
20 have an assistant VP in charge of Claims?

21 A. I believe so.

22 Q. And how many direct reports do
23 you have?

24 A. I don't know specifically.

25 Q. Why don't you tell me by title.

1 J. PHAM

2 A. I have three directors
3 reporting to me. I have a few other
4 people -- I have two black-belt candidates
5 reporting to me.

6 Q. Black-belt?

7 A. Right. I have a complaint
8 analyst reporting to me. And temporarily
9 today I have an entirely other unit of
10 system coordinators and clerks reporting
11 to me.

12 Q. So the three directors report
13 to you, and what are their titles?

14 A. One is the No-Fault director.
15 One is the Liability director. One is the
16 Auto Damage director.

17 Q. What is a black-belt candidate?

18 A. A black-belt candidate is a
19 person who assists us in implementing and
20 using Lean Six Sigma.

21 Q. So they basically work on Lean
22 Six Sigma?

23 A. Projects, right.

24 Q. What are the duties and
25 responsibilities of a complaint analyst?

1 J. PHAM

2 A. She is the liaison between the
3 State Insurance Department and the company
4 for claims complaints, as well as any
5 other complaints which we might receive.

6 Q. Now, you said that currently
7 you have system coordinators and clerks
8 reporting to you. Is that just a
9 temporary thing?

10 A. Yes.

11 Q. Why is it temporary?

12 A. Because the person who they
13 were reporting to was promoted and we
14 haven't filled those positions yet.

15 Q. Who was the person -- what was
16 the title of the person they were
17 reporting to?

18 A. It was a systems coordinator.

19 Q. Now, does this system
20 coordinator who is in charge of the other
21 systems coordinators and clerks report to
22 you?

23 A. Not anymore.

24 Q. Who will they be reporting to?

25 A. She now reports to the Auto

1 J. PHAM

2 Damage director.

3 Q. When you hire the person who
4 will be filling the position of systems
5 coordinator, will that person be reporting
6 to you?

7 A. No.

8 Q. That person will be reporting
9 to the Auto Damage director?

10 A. Right, either the Auto Damage
11 director or the Liability director. It is
12 not determined yet.

13 Q. Well, indirectly it is, but not
14 directly?

15 A. Indirectly. Directly, it will
16 not be me.

17 Q. Now, you say Liability and Auto
18 Damage director. Who is the Liability
19 director currently?

20 A. The Liability director is
21 Jeremy Connor.

22 I forgot, I also have our
23 upstate Claims manager reports to me.

24 Q. And who is that?

25 A. Linda Wysocki.

1 J. PHAM

2 Q. Where is the New York upstate
3 office?

4 A. In Woodbury.

5 Q. In Woodbury, New York?

6 A. Yes, on Long Island. It is a
7 virtual office.

8 Q. Even though it is for upstate,
9 it is down in Long Island?

10 A. Yes.

11 Q. How many different positions
12 report to Jeremy Connor?

13 A. All of the ones that we
14 discussed that are Liability.

15 Q. Can you just go through it
16 again?

17 A. CSRs, TCR I's, TCR II's, CU
18 examiners, total theft examiners and their
19 supervisors, managers, and associated
20 clerical work that comes along with it.

21 Q. How many supervisors are there
22 for the TCRs, CSRs, for the -- let me
23 rephrase it to make it easier.

24 How many supervisors are there
25 for the people that report to Jeremy

1 J. PHAM

2 Connor?

3 A. I don't know specifically. I
4 would say Jeremy has a manager in CSR and
5 that manager has six or seven supervisors
6 reporting to her. There are two managers
7 in TCR I. Each of them has ten or so
8 supervisors reporting to them. There are
9 three managers who are responsible for TCR
10 II and CU. Each of them has ten or so
11 supervisors reporting to them.

12 Q. So the TCR I's do not have the
13 same manager -- or supervisor as the TCR
14 II's?

15 A. Correct.

16 Q. It is different?

17 A. Yes.

18 Q. Who is the current TCR II
19 supervisor?

20 A. TCR II supervisor?

21 Q. Yeah.

22 A. We probably have 15 of them or
23 so.

24 Q. And they all work out of the
25 Woodbury office?

1 J. PHAM

2 A. Yes.

3 Q. And how many TCR II's does each
4 supervisor have reporting to them?

5 A. It varies. Generally between
6 six and eight.

7 Q. And how many TCR I's do each
8 supervisor have reporting to them?

9 A. Generally between six and
10 eight.

11 Q. And it is a different
12 supervisor, though?

13 A. Yes.

14 Q. Does the supervisor who -- I'm
15 just talking about generically -- does the
16 supervisor who has the TCR II's reporting
17 to them, do they have a title or a
18 position name?

19 A. Yes.

20 Q. And what is that?

21 A. TCR II supervisor.

22 Q. And how about the supervisors
23 that have the TCR I's reporting to them?

24 A. What about them?

25 Q. What's their title or name?

1 J. PHAM

2 A. TCR I supervisor.

3 Q. Now, does a TCR I supervisor
4 only have TCR I's reporting to them?

5 A. Yes.

6 Q. Now, is there a document or a
7 corporate org chart that would set forth
8 this whole organizational structure?

9 A. I'm not sure. We may have one,
10 but I'm not sure how low the level goes.

11 Q. And would this org chart also
12 be located on the Genie system?

13 A. I'm not sure.

14 Q. Where would one find an org
15 chart that would reflect the regional
16 offices of GEICO?

17 A. Sometimes they are attached to
18 business plans.

19 Q. Have you ever prepared an org
20 chart for your office?

21 A. No.

22 Q. Have you ever seen an org chart
23 for your office?

24 A. Yes, I have seen an org chart
25 for my department, for Claims, yeah.

1 J. PHAM

2 Q. And when was the most recent
3 time that you saw this org chart?

4 A. 2008.

5 Q. If you had to go find that org
6 chart, where would you go look for it?

7 A. I would contact our planning
8 manager and ask for it.

9 Q. What's a planning manager?

10 A. A planning manager is the
11 person who helps us coordinate the
12 business plan.

13 Q. What office or department is
14 this person in?

15 A. Woodbury.

16 Q. And is it in your specific
17 department or is it a corporate, other
18 corporate office?

19 A. It is not another corporate
20 office. They report directly to Seth, the
21 RVP.

22 Q. During the course of this
23 deposition, I'm going to be focusing
24 mostly on TCR I and II. If I forget to
25 put them in a question, if I don't mention

1 J. PHAM

2 it, just assume I'm speaking about TCR I
3 and II.

4 A. Yes.

5 Q. Have you ever heard of an
6 individual named Candace Harper?

7 A. Yes.

8 Q. When did you first meet her?

9 A. I believe I first met her at
10 her deposition in person.

11 Q. Had you heard of her name
12 before the deposition?

13 A. Yes.

14 Q. When did you first hear of her
15 name?

16 A. I first heard her name when I
17 became aware that we were terminating her
18 employment.

19 Q. Were you the assistant VP of
20 Claims during the time that Ms. Harper
21 worked for GEICO?

22 A. I don't believe so. Not the
23 entire time.

24 Q. How about at any time?

25 A. Yes, I've been the assistant

1 J. PHAM

2 vice president in Region II since 2006.

3 Q. Did you first hear or learn
4 of -- or hear Ms. Harper's name in 2006?

5 A. No.

6 Q. Did you ever audit her work?

7 A. No.

8 Q. Did you ever watch her work?

9 A. No.

10 Q. Did you ever observe her while
11 she was in the office?

12 A. No.

13 Q. Is there a formal training
14 program for TCR I?

15 A. Yes.

16 Q. And what is it?

17 A. It is classroom training
18 followed by a practical claims handling,
19 which we call transition.

20 Q. So the practical claims
21 handling is referred to within GEICO as
22 transition?

23 A. Correct.

24 Q. Is it transition training or
25 just transition?

1 J. PHAM

2 A. Just transition.

3 Q. And how long does the classroom
4 training last?

5 A. For TCR I?

6 Q. Yes, I'm asking about TCR I's.

7 A. I'm not sure specifically. I
8 think it is four weeks.

9 Q. And where does this classroom
10 training take place?

11 A. In Woodbury.

12 Q. What is classroom training
13 comprised of?

14 A. Classroom training is comprised
15 of discussing -- going through the
16 training material and teaching examiners
17 how to investigate and resolve claims,
18 coverage liability and damages.

19 Q. Is the Woodbury location the
20 corporate headquarters for GEICO?

21 A. No.

22 Q. Where is the corporate
23 headquarters for GEICO?

24 A. Chevy Chase, Maryland.

25 Q. Are all TCRs given the same

1 J. PHAM

2 classroom training?

3 MR. HEMMENDINGER: Excuse me,
4 but when you say "all," within Woodbury or
5 nationwide?

6 MS. RUDICH: I mean nationwide.

7 MR. HEMMENDINGER: Okay.

8 A. I would say no.

9 Q. How is it different?

10 A. Each state has different laws
11 regarding negligence and different
12 regulations which we have to comply with.
13 We are regulated on a state by state
14 basis.

15 The training will differ based
16 on the regulations of that state and may
17 also differ with respect to different
18 procedures that each region would put into
19 place.

20 Q. So are the TCRs given different
21 training manuals or training material
22 depending on where they are located, or is
23 the training material and training manuals
24 the same?

25 A. It depends.

1 J. PHAM

2 Q. It depends on what?

3 A. It depends on -- there is
4 generally, I believe, a training manual
5 for TCR I that our Claims home office
6 produces. That training material is
7 usually supplemented and sometimes edited
8 by regions.

9 Q. So other than the different
10 state laws or regulations that apply in
11 different states, is the training the
12 same?

13 A. It is hard to say.

14 Q. And why is it hard to say?

15 A. Because I think that
16 essentially the training is going to have
17 the same underlying tenets of
18 investigating coverage and resolving
19 coverage, liability and damages. But the
20 nuances of claim handling vary so greatly
21 state to state and jurisdiction to
22 jurisdiction that I think it is impossible
23 to say that it would be the same.

24 Q. How about, is it substantially
25 similar?

1 J. PHAM

2 A. Probably.

3 Q. As you said, they are given the
4 same training manuals except they are
5 supplemented by the different states'
6 laws, correct?

7 A. They are supplemented by the
8 different states' laws, and the regions
9 may have different procedures as well.

10 Q. Based on the state laws?

11 A. Not necessarily based on the
12 state laws. Based on procedures or
13 processes that the region has put into
14 place to handle their claims.

15 Q. How would one go about -- if
16 somebody wanted to know which different
17 processes -- withdrawn.

18 If one wanted to know how do I
19 learn which processes are in effect in the
20 different regions within GEICO, how would
21 they go about learning that?

22 A. I would say you would ask the
23 trainers in each of the locations or
24 review the manuals in each of the
25 locations.

1 J. PHAM

2 Q. Now, do all the TCR I's within
3 a region go to the same training place
4 within a specific region? Like, for
5 instance, within the New Jersey Region,
6 would they all go to the same place?

7 A. No. I mean, they would be
8 trained -- we train each class basically
9 in a classroom. TCR I's are trained in
10 the region in a classroom.

11 Q. I'm saying, but it is not done
12 by office, right? They would all go --
13 withdrawn.

14 Let's just say Marlton hires
15 some new TCRs and Maryland hires some new
16 TCRs and they are hired about the same
17 time. Since they are in the same region,
18 would they go to the same training class
19 or would they have separate training
20 classes for each office?

21 A. For TCR I, they are separate
22 training classes in each office.

23 Q. But if they are within the same
24 region or the same state, they get the
25 same training?

1 J. PHAM

2 A. Yes.

3 Q. Now, what about for TCR II's?

4 A. TCR II's -- well, what?

5 Q. Let me ask you, what training
6 are they given?

7 A. TCR II's are given, I believe,
8 pre-school in the specific region and then
9 they go to centralized school and then
10 they come back for post-school in the
11 region.

12 Q. So all TCR II's have pre-school
13 training?

14 A. Yes.

15 Q. And all TCR II's go to the
16 centralized school for training?

17 A. Yes.

18 Q. Then all TCR II's then have
19 post-school training?

20 A. Back in their region, yes.

21 Q. Now, where is the centralized
22 school located?

23 A. I believe it is either in
24 Virginia Beach or the corporate
25 headquarters, depending on room

1 J. PHAM

2 availability. Mostly in Virginia Beach.

3 Q. This would be from all over the
4 country?

5 A. Yes.

6 Q. And they attend the same
7 classes?

8 A. Yes.

9 Q. And they are given the same
10 manuals?

11 A. Yes.

12 Q. Now, what about pre-school, are
13 pre-schools the same from region to region
14 or do they differ for different regions?

15 A. They differ from region to
16 region.

17 Q. How do they differ?

18 A. They differ because the laws
19 and regulations and negligence standards
20 are different from region to region.

21 Q. But all TCR II's are getting
22 the same training regarding the laws and
23 regulations within their region, correct?

24 A. I'm not sure.

25 Q. For instance, all TCR II's get

1 J. PHAM

2 education or get training relating to laws
3 in their region?

4 A. Yes.

5 Q. The laws might be different,
6 but they are all getting the same type of
7 training about these different laws,
8 correct?

9 A. I'm not sure how the
10 training -- I don't see the curriculum for
11 the other locations' pre-schools, so I
12 can't comment as to what they are doing.

13 Q. Who would?

14 A. I would say someone from Home
15 Office Training and Education might be
16 able to.

17 Q. Then all TCRs are given this
18 post-school training back in their
19 specific region, correct?

20 A. Yes.

21 MR. HEMMENDINGER: TCR II's,
22 you mean?

23 MS. RUDICH: Yes.

24 Q. And for this centralized
25 school, how long is that?

1 J. PHAM

2 A. I don't know specifically. I
3 forgot.

4 Q. Is it more than a day?

5 A. Yes.

6 Q. Is it a few weeks?

7 A. I think it is a few weeks, yes.

8 Q. During the centralized school
9 portion of the training, all TCRs are
10 subject to the same training regimen,
11 correct?

12 A. Yes.

13 Q. And it doesn't matter which
14 office they work in?

15 A. Correct.

16 Q. And it is throughout the
17 different states and throughout the
18 country?

19 A. Yes.

20 Q. Is there a job code for the TCR
21 I job?

22 A. Yes.

23 Q. What is it?

24 A. I don't recall.

25 Q. Do all TCR I's have the same

1 J. PHAM

2 job code?

3 A. Yes.

4 Q. Are all TCR I's given the same
5 grade?

6 A. Yes.

7 Q. And what is their grade?

8 A. 63.

9 Q. Now, what is a grade within the
10 GEICO parlance?

11 A. Each of our jobs has a grade
12 which has with it an accompanying pay
13 schedule. There is a minimum salary.
14 There is a midpoint. And there is a
15 maximum salary for each grade. It is a
16 lot like the government.

17 Q. So each person who holds the
18 same grade has the same minimum salary
19 that they are entitled to, has the same
20 midpoint salary for that grade, and has
21 the same maximum salary?

22 A. Well, it depends. The minimum,
23 midpoint, and maximum vary by location,
24 where you work.

25 Q. But within the location where

1 J. PHAM

2 you work, it is all the same?

3 A. Yes. Everyone in that grade,
4 regardless of the specific job that you
5 are in, is subject to the same guidelines
6 with respect to salary.

7 Q. Now, is there a job code for
8 TCR II?

9 A. Yes.

10 Q. And do all employees holding
11 the position of TCR II have the same job
12 code?

13 A. Yes.

14 Q. And what about, do all TCR II's
15 have the same grade?

16 A. Yes.

17 Q. Does that salary bracketing,
18 does that apply to the TCR II's as well?

19 A. Yes.

20 MS. RUDICH: Why don't we take
21 a break now.

22 (Recess taken.)

23 BY MS. RUDICH:

24 Q. This next document has been
25 marked as Pham 2. It is a one-page

1 J. PHAM

2 document entitled "Government Employees
3 Company Telephone Claims Representative 2
4 Job Description," and it has the Bates
5 stamp number of GEICO 277.

6 (Pham Exhibit 2 marked for
7 identification.)

8 Q. Mr. Pham, please look at this.

9 (Witness perusing document.)

10 Q. Mr. Pham, have you ever seen
11 this document before?

12 A. Yes, I believe I have.

13 Q. And what is it?

14 A. This is a job description.

15 Q. For what position?

16 A. TCR II.

17 Q. Would we be in agreement when
18 we are talking about TCR II's, we are also
19 talking about TA examiner II's throughout
20 this deposition?

21 A. Right.

22 Q. I don't want to have to keep
23 asking is this for TA examiner II.

24 A. Yes, we are in agreement.

25 Q. It says that this is for

1 J. PHAM

2 telephone claims representative II for all
3 Claims Departments except California,
4 correct?

5 A. Correct.

6 Q. So this would apply for all
7 telephone claim representatives II
8 wherever they worked, except in
9 California?

10 A. Correct.

11 Q. This is regardless of the
12 office they worked in, correct?

13 A. Yes.

14 Q. And this would be the same job
15 description regardless of the state they
16 work in?

17 A. Except California, yes.

18 Q. Now, is this an accurate
19 recitation of the duties and
20 responsibilities of a TCR II?

21 A. Mostly, yes.

22 Q. Is there anything that's not
23 true on this document?

24 A. No.

25 MS. RUDICH: I'm going to ask

1 J. PHAM

2 this next document be marked as Pham
3 Exhibit 3. It is a one-page document
4 entitled "Human Resources Liability Claims
5 Career Choices," and it has the Bates
6 stamp number GEICO 248.

7 (Pham Exhibit 3 marked for
8 identification.)

9 Q. Mr. Pham, have you ever seen
10 this document before today?

11 A. No.

12 Q. What is the difference
13 between -- what is the difference in the
14 duties and responsibilities between CSR II
15 and the TCR I?

16 A. The CSR II handles mostly cases
17 where liability is not a question.
18 However, they do handle some cases where
19 liability is in question where they will
20 work to resolve liability, make a decision
21 on who is responsible for the property
22 damage claim.

23 Q. So they sometimes work on cases
24 where liability is in question?

25 A. Yes. They are also taking,

1 J. PHAM

2 still, loss reports on the phone, whereas
3 the TCR I is not taking the initial loss
4 report.

5 Q. And TCR I handles cases where
6 liability is a question?

7 A. Yes, in most cases.

8 Q. Are there any other differences
9 between CSR II duties and responsibilities
10 and TCR I?

11 A. No, that's the main one.

12 Q. I'm referring your attention
13 back to Exhibit 3, where it says that
14 DirectNet -- do you see that in the
15 corner?

16 A. Yes.

17 Q. Is that the intracompany
18 Internet that you testified to earlier?

19 A. Yes.

20 Q. And would this be available to
21 everybody who worked for GEICO regardless
22 of where they are located?

23 A. I'm not sure. I believe so.
24 Depending on where you go, some areas of
25 DirectNet are secure and require different

1 J. PHAM

2 authority.

3 Q. Each region doesn't have their
4 own DirectNet, does it?

5 A. No. Some regions may have
6 their own separate pages in DirectNet, but
7 everybody uses the same system.

8 Q. What about Human Resources,
9 does each region have its own Human
10 Resources or is there a centralized Human
11 Resources office?

12 A. Each region does have its own
13 Human Resources and there is a centralized
14 Human Resource office.

15 Q. Is there any way that you could
16 tell whether this document that's in front
17 of you, Exhibit 3, was generated by the
18 central Human Resource office, or was it
19 generated by a specific regional Human
20 Resource office?

21 A. I can't tell from looking at
22 it. It looks like it would be the central
23 Human Resource.

24 Q. So this would be the liability
25 claims career choices for the entire

1 J. PHAM

2 company, correct?

3 A. By and large, yes.

4 Q. So they have the same -- so the
5 liability claims career choices would be
6 the same on a company-wide basis?

7 A. Generally, yes, but not all of
8 these positions exist in every region.

9 Q. I understand. But if these
10 positions exist in every region, this
11 would be a company-wide liability claims
12 career choice pathway?

13 A. Yes.

14 Q. I apologize if I asked you this
15 before, and I think I did, the difference
16 in duties and responsibilities between TCR
17 I and TCR II is that TCR II handles bodily
18 injuries and TCR I do not?

19 A. Generally, yes. The main
20 difference between TCR I's and TCR II's is
21 TCR I's do not handle any cases involving
22 injury.

23 Q. Personal injury?

24 A. Right.

25 Q. Property injury?

1 J. PHAM

2 A. Claims of bodily injury by a
3 third party.

4 Q. So that's what TCR II handles?

5 A. Correct.

6 Q. Other than that, they handle
7 the same type of claims?

8 A. Yes. TCR II's also handle
9 property damage.

10 Q. They have the added claim of
11 personal bodily injury?

12 A. That's correct.

13 MS. RUDICH: I'm going to ask
14 that this next document be marked as Pham
15 Exhibit 4. It is a one-page document that
16 says "Grade 63 TCR I," and it has the
17 Bates stamp number GEICO 254.

18 (Pham Exhibit 4 marked for
19 identification.)

20 Q. Mr. Pham, have you had a chance
21 to review what's been marked as Exhibit 4?

22 A. Yes.

23 Q. What is this?

24 A. I don't know.

25 Q. You have never seen it before?

1 J. PHAM

2 A. No, I have never seen it
3 before.

4 Q. Does this accurately describe
5 the job duties for Grade 63 TCR I?

6 MR. HEMMENDINGER: I'm sorry,
7 you mean II, don't you? I have II.

8 MS. RUDICH: I'm sorry, you
9 were given the wrong one.

10 Q. Does this accurately describe
11 the job duties for TCR I?

12 A. Generally, yes, under the Job
13 Duties section, yes.

14 Q. And does this accurately
15 describe the job requirements for TCR I?

16 A. Yes.

17 Q. Does this accurately describe
18 the job success factors for TCR I?

19 A. Yes.

20 Q. And does this accurately
21 describe the training opportunities for
22 TCR I?

23 A. I'm not sure about that.

24 Q. And is this the job duties for
25 TCR I's throughout the country?

1 J. PHAM

2 A. Generally, yes. Where it says
3 "may settle PIP medical or total payment
4 claims" is where you can get some regional
5 differences.

6 Q. But this says "may settle or."
7 So it is basically saying they could
8 settle all of them or some of them or none
9 of them?

10 A. Right.

11 Q. But this accurately describes
12 the job duties for all TCR I's throughout
13 the country?

14 A. Generally, yes.

15 Q. And what about the job
16 requirements?

17 A. Yes.

18 Q. So this Exhibit 4 accurately
19 sets forth the job requirements for all
20 TCR I's throughout the company?

21 A. It generally does, yes.

22 Q. When you say "generally," where
23 doesn't it?

24 A. Each individual region, in
25 terms of requirements at the time they

1 J. PHAM

2 fill a position, each individual region,
3 when they post that job, may have separate
4 requirements that they decide they want to
5 put on in terms of the length of
6 experience at CSR II or CSR I.

7 Q. But this is the general job
8 requirements for all TCR I's throughout
9 the company?

10 A. Generally, yes.

11 Q. What about the job success
12 factors?

13 A. Generally, yes, it is the same
14 job success factors.

15 Q. For all TCR I's throughout
16 GEICO?

17 A. Yes.

18 Q. In any region?

19 A. Yes.

20 Q. In any office?

21 A. Yes.

22 MS. RUDICH: I'm going to ask
23 that the next document be marked as Pham
24 Exhibit 5. It is a one-page document
25 entitled "Grade 64 TCR II," and it has the

1 J. PHAM

2 Bates stamp number GEICO 255.

3 (Pham Exhibit 5 marked for
4 identification.)

5 Q. Mr. Pham, have you had a chance
6 to review what has been marked as Exhibit
7 5?

8 A. Yes.

9 Q. What is this?

10 A. I'm not sure.

11 Q. You have never seen it before?

12 A. Correct.

13 Q. So does Exhibit 5 accurately
14 set forth -- accurately describe the job
15 duties for TCR II?

16 A. Generally, yes.

17 Q. Does this Exhibit 5 accurately
18 set forth the job requirements for TCR II?

19 A. Generally, yes.

20 Q. Does Exhibit 5 accurately set
21 forth the job success factors for Exhibit
22 5?

23 A. Generally, yes.

24 Q. Are the job duties that are set
25 forth on Exhibit 5 for TCR II's the same

1 J. PHAM

2 throughout the country?

3 A. Mostly.

4 Q. And what's the difference?

5 A. In some locations they do not
6 settle PIP and/or medical claims, and
7 there may be differences in other
8 locations with other activities that they
9 don't have TCR II's doing.

10 Q. It says "may settle PIP
11 and/or," so it uses the term "may," so
12 basically what it says is that in some
13 places they do and some places they don't,
14 but this particular, let's say I would use
15 these seven bullet points of job duties
16 would accurately set forth the job duties
17 of TCR II's throughout the country,
18 correct?

19 A. Yes.

20 Q. In all regions?

21 A. Yes.

22 Q. And in all offices?

23 A. Yes.

24 Q. And in all states?

25 A. Yes.

1 J. PHAM

2 Q. Does Exhibit 5 set forth the
3 job requirements for all TCR II's
4 throughout the company?

5 A. Yes, again, generally.

6 Q. And in every state?

7 A. Yes.

8 Q. And every office?

9 A. Generally, yes.

10 Q. And every region?

11 A. Yes.

12 Q. Does Exhibit 5 set forth the
13 job success factors for TCR II across the
14 company?

15 A. Yes.

16 Q. In any office?

17 A. Yes.

18 Q. And in any region?

19 A. Yes.

20 Q. And in any state?

21 A. Yes.

22 Q. And I understand the training
23 opportunities, you might not be that
24 familiar with, correct?

25 A. Correct.

1 J. PHAM

2 Q. If you compare Exhibit 4 with
3 Exhibit 5, the job duties set forth on the
4 TCR I document are very similar to the job
5 duties set forth on the TCR II duties,
6 correct?

7 A. Yes.

8 Q. And the TCR I job duties are
9 similar to the -- so the TCR I position
10 has similar duties and responsibilities as
11 the TCR II position?

12 A. With the exception of BI
13 settlements, yes.

14 Q. And the BI settlements would be
15 on TCR II?

16 A. That's correct.

17 Q. Exhibit 5?

18 A. Yes.

19 Q. And what are BI settlements?

20 A. Bodily injury.

21 Q. So with the exception of the
22 bodily injury settlements, it is the same,
23 isn't it?

24 A. Generally, yes.

25 Q. Now, what about the job

1 J. PHAM

2 requirements, are they the same?

3 A. Generally they are the same,
4 yes, just with the exception that the TCR
5 II requirement is you need TCR I
6 experience.

7 Q. Which is probably the level
8 directly below that position, correct?

9 A. That's correct.

10 Q. So other than that, the job
11 requirements for TCR I and TCR II are the
12 same?

13 A. Yes, essentially.

14 Q. And the job success factors for
15 TCR I and TCR II, are they the same?

16 A. Yes, it looks like they are the
17 same.

18 Q. So the only difference
19 basically between TCR I and TCR II is that
20 TCR I does not evaluate and negotiate
21 bodily injury claims or settlements?

22 A. That's correct. TCR II's do
23 evaluate and negotiate bodily injury
24 claims or settlements.

25 Q. Now, do TCR I's have the same

1 J. PHAM

2 duties throughout the entire company?

3 A. No.

4 Q. And why not?

5 A. Because, again, because of the
6 different laws and the different regions
7 and because of different processes and
8 procedures that each region may have in
9 response to some of those laws or based on
10 decisions that they have made, sometimes
11 the job -- there are differences in TCR I
12 or TCR II in individual regions.

13 Q. And that is based solely on the
14 different laws and regulations within the
15 states?

16 A. Not entirely. There can be
17 additional responsibilities that regions
18 choose to have done by different levels.

19 Q. So tell me which regions in
20 GEICO -- now, you say that there can be
21 additional responsibilities that regions
22 choose to have done by different levels.
23 What are they?

24 A. I will give you an example.

25 For example, in New York we

1 J. PHAM

2 chose to have property damage -- some
3 property damage suits handled at the TCR I
4 level. In most other locations, again,
5 I'm not aware of what happens in all of
6 them, those might be handled at the
7 continuing unit level.

8 Because of the negligence laws
9 in New York and the threshold, we choose
10 to have TCR I's rule out bodily injury
11 rather than having TCR II's do that. For
12 example, because there is a threshold that
13 needs to be pierced in order for a bodily
14 injury claim to persist, the TCR I's
15 generally will explain no-fault to the
16 customer if they say they are injured and
17 have a discussion regarding whether or not
18 the injury pierces the threshold.

19 Q. I understand that.

20 But all TCR I's throughout the
21 company, according to Exhibits 4 and 5,
22 handle property damage claims, correct?

23 A. Yes, but not all regions handle
24 property damage suits in TCR I.

25 Q. Right, I understand that. But

1 J. PHAM

2 they all evaluate claims and negotiate
3 property damage settlements?

4 A. Yes.

5 Q. And the way they do that might
6 be different because of the individual
7 states' laws, correct?

8 A. Correct.

9 Q. And all TCR I's throughout the
10 whole company conduct the necessary
11 investigations to determine policy
12 coverage and details of the loss?

13 A. Yes.

14 Q. And that might be different
15 because of the different laws within that
16 state?

17 A. Correct.

18 Q. And all TCR I's throughout the
19 entire company analyze information and
20 determine the company's liability under
21 the policy contracts?

22 A. Yes.

23 Q. And the policy contracts could
24 be different depending on the customer,
25 correct?

1 J. PHAM

2 A. Absolutely.

3 Q. But they all do that same
4 general and material function for GEICO?

5 A. Yes.

6 Q. And all TCR I's throughout the
7 company determine possible payment
8 recovery, correct?

9 A. Yes.

10 Q. But that payment recovery might
11 be different because of the different
12 states?

13 A. Absolutely.

14 Q. But they all do the same thing?

15 A. Yes, they all do that.

16 Q. They all do that?

17 A. Yes.

18 Q. So the differences that you've
19 been describing are really a function of
20 the different state laws -- I mean, mainly
21 the differences that you just described
22 are really differences based upon the
23 various state laws in which a claims
24 examiner works?

25 A. No, I wouldn't say that.

1 J. PHAM

2 Q. Why not?

3 A. Because the decisions -- in
4 addition to the job duties that are
5 described on I guess Exhibit 4, each
6 region is able to assign different
7 responsibilities to different levels if
8 they deem it better for the business to do
9 that.

10 For example, there is no state
11 or regulatory need that dictates that
12 property damage suits are handled at the
13 TCR I level. There is no law or
14 regulation that would say that. Region II
15 made a business decision to handle
16 property damage suits at the TCR I level
17 because we felt that we had examiners with
18 enough experience to be able to handle the
19 litigation at the lower level for property
20 damage suits only and disputes involving
21 property damage only. And that's a
22 business decision that doesn't have any
23 bearing on the laws of the state.

24 Q. But the way that a TCR I would
25 handle a property damage suit in Region I

1 J. PHAM

2 would be the same way that a TCR II would
3 handle a property damage suit in another
4 office, correct?

5 A. Or a continuing unit examiner.

6 Q. So they handle it the same way,
7 it is just that TCR I's in New York might
8 do that particular task where they don't
9 do it in another region?

10 A. It is hard to say. Every claim
11 is different. So I wouldn't say -- you
12 know, I wouldn't say it is a task. Every
13 claim is different. Every suit is
14 different. So you wouldn't do that if you
15 didn't feel that your TCR I's could handle
16 the severity and complexity of litigation.

17 So I wouldn't say -- it is
18 never the same handling of a claim from
19 start to finish.

20 Q. I know. But GEICO does have
21 programs and does have company-wide
22 computer-generated programs to help a
23 claims representative handle certain types
24 of claims, correct?

25 A. Not for litigation.

1 J. PHAM

2 Q. Every TCR I and II throughout
3 the country uses Claims IQ, correct?

4 A. Yes.

5 Q. And what is Claims IQ?

6 A. Claims IQ is a system where we
7 input information and answer different
8 questions based on the examiner's judgment
9 to be able to assure that the examiner is
10 evaluating all of the areas in determining
11 liability and damages.

12 Q. And that program is not
13 different in each region, correct?

14 A. The program may differ by
15 jurisdiction depending on the different
16 laws in that jurisdiction, or different
17 values assigned to claims in that
18 jurisdiction.

19 Q. But I'm saying, it is the same
20 program that might have different inputs
21 or different values based upon the
22 location?

23 A. Yes.

24 Q. And how about Doc Magic?

25 A. Doc Magic is a Region II

1 J. PHAM

2 specific system.

3 Q. Just so I'm clear, so in other
4 regions TCR II's handle the property
5 damage suits?

6 A. No, in other regions usually
7 continuing unit examiners handle property
8 damage suits.

9 Q. Now, in Region II, does any
10 other position handle property damage
11 suits besides TCR I's?

12 A. Yes, continuing unit examiners
13 handle property damage suits as well.

14 Q. Do TCR II's handle property
15 damage suits?

16 A. I don't think so.

17 Q. Now, are all TCR I's paid on a
18 salary basis?

19 A. Yes.

20 Q. Are all TCR I's classified as
21 exempt under the FLSA?

22 A. Once they are off orientation,
23 yes.

24 Q. What does it mean to be off
25 orientation?

1 J. PHAM

2 A. During their initial training
3 and transition period until we certified
4 that they are completely trained, they are
5 nonexempt.

6 Q. But once they pass the training
7 portion of their job, then they are
8 classified as exempt?

9 A. Yes.

10 Q. What about TCR II's, are all
11 TCR II's paid on a salary basis?

12 A. Yes.

13 Q. Are all TCR II's classified as
14 exempt?

15 A. I believe everywhere except for
16 California.

17 Q. In California they are
18 classified as nonexempt?

19 A. I think so.

20 Q. Who would know that, Human
21 Resources?

22 A. Yes, Human Resources would know
23 that.

24 Q. Is there a specific department
25 in Human Resources that handles the

1 J. PHAM

2 classification of employees for the FLSA
3 purposes?

4 A. Yes.

5 Q. And what is that?

6 A. Compensation.

7 Q. I think you testified earlier
8 that all TCR II's, that there is a salary
9 bracket set for TCR II's?

10 A. For each location.

11 Q. For each location?

12 A. Yes, salary schedule we call
13 it.

14 Q. You call it a salary schedule.
15 So a TCR II could not make less than a
16 certain amount or more than a certain
17 amount, correct?

18 A. They cannot make less than a
19 certain amount. In order for them to make
20 more than the suggested maximum, that
21 would be a fairly large exception.

22 Q. How many times have you seen
23 that exception occur?

24 A. Maybe once.

25 Q. In your 20 years?

1 J. PHAM

2 A. In my 20 years, yes.

3 Q. It is the same for TCR I's?

4 A. Yes.

5 Q. Have you ever seen an exception
6 to the salary schedule for a TCR I?

7 A. I don't think so.

8 Q. So they all have the same
9 minimum, same midpoint, and same maximum
10 level within a region?

11 A. They don't have the same --
12 each grade has a minimum, midpoint and
13 maximum. The numbers differ for each
14 grade, yes.

15 Q. But did you testify before that
16 all TCR II's are the same grade?

17 A. Yes.

18 Q. And all TCR I's are the same
19 grade?

20 A. Right. But they are different
21 grades.

22 Q. I understand that.

23 Who made the decision to
24 classify TCR I's as exempt under the FLSA?

25 A. I don't know.

1 J. PHAM

2 Q. Who would know?

3 A. I think that was in the answers
4 to interrogatories. Again, Human
5 Resources.

6 Q. Did you speak to anyone in
7 Human Resources about the decision to
8 classify TCR I's as exempt under the FLSA
9 before this deposition?

10 A. No.

11 Q. Did you review any documents
12 regarding the decision to classify TCR I's
13 as exempt under the FLSA before this
14 deposition?

15 A. No.

16 Q. Who made the decision to
17 classify TCR II's as exempt under the
18 FLSA?

19 A. I don't know, again.

20 Q. Did you do anything to educate
21 yourself on that information before the
22 deposition here today?

23 A. No.

24 Q. When was the decision made to
25 classify TCR I's as exempt under the FLSA?

1 J. PHAM

2 A. I don't know.

3 Q. What did you do to learn that
4 information before this deposition?

5 A. I don't know. I think I may
6 have had that answer in the answer to
7 interrogatories.

8 Q. Did you speak to anybody --

9 A. No.

10 Q. Just let me finish my question.

11 A. I'm sorry.

12 Q. Did you speak to anyone before
13 the deposition to learn when the decision
14 was made to classify TCR I's as exempt?

15 A. No.

16 Q. Did you speak to anyone before
17 the deposition to learn when the decision
18 was made to classify TCR II's as exempt?

19 A. No.

20 Q. What were the reasons for the
21 decision to classify TCR I's as exempt?

22 A. I don't know.

23 Q. Did you speak to anybody before
24 this deposition to learn what the reasons
25 were that GEICO considered when it

1 J. PHAM

2 classified TCR I as exempt?

3 A. No.

4 Q. What were the reasons that

5 GEICO classifies TCR II's as exempt?

6 A. I would be speculating if I
7 said that.

8 Q. Did you speak to anyone before
9 this deposition to learn the reasons why
10 GEICO classifies TCR II's as exempt?

11 A. No.

12 Q. Are all TCR II's classified as
13 exempt?

14 A. Yes, except California.

15 Q. Did you ask to look at any
16 documents relating to GEICO's decision to
17 classify TCR I and II's as exempt before
18 this deposition?

19 A. No.

20 Q. Do you know what factors were
21 considered in classifying TCR I's and II's
22 as exempt?

23 A. No.

24 Q. Now, when your region hires
25 somebody for the position of TCR I, is it

1 J. PHAM

2 automatically -- is the exempt status
3 under the FLSA automatically assigned to
4 that person for that position?

5 A. Yes, once they complete
6 orientation.

7 Q. Is it the same for TCR II?

8 A. Yes. But TCR II's are exempt
9 from the start. They are not nonexempt
10 during orientation.

11 Q. In determining whether a TCR II
12 is exempt, what consideration is given to
13 the location of the office in which a TCR
14 II works in?

15 A. Beyond California, I don't
16 think any consideration is given.

17 Q. How about a TCR I?

18 A. Again, beyond California, I
19 don't think any.

20 Q. In determining whether a TCR I
21 is exempt, what consideration is given to
22 the state in which a TCR I works in other
23 than California?

24 A. I don't think there is any.

25 Q. How about for TCR II?

1 J. PHAM

2 A. I don't think there is any.

3 Q. And, again, California?

4 A. Right.

5 Q. How about if I give a general
6 caveat that my questions now will all be
7 for areas or locations other than
8 California.

9 A. Great.

10 Q. So I don't have to keep saying
11 that.

12 A. Great.

13 Q. In determining whether a TCR I
14 is exempt, what consideration is given to
15 the volume of claims a specific office
16 handles?

17 A. I don't believe there is any.

18 Q. In determining whether a TCR II
19 is exempt, what consideration is given to
20 the volume of claims a specific office
21 handles?

22 A. I don't believe there is any.

23 Q. Has GEICO ever taken into
24 account the state in which a TCR I works
25 in in determining whether to classify a

1 J. PHAM

2 TCR I as exempt other than California?

3 A. I believe not.

4 Q. Has GEICO ever taken into
5 account the state in which a TCR II works
6 in in determining whether to classify a
7 TCR II as exempt other than California?

8 A. I don't believe so.

9 Q. Has GEICO ever taken into
10 account the office in which a TCR I works
11 in in determining whether to classify him
12 or her as exempt?

13 A. Other than California, I don't
14 believe so.

15 Q. All these are other than
16 California.

17 Has GEICO ever taken into
18 account the office in which the TCR II
19 works in in order to classify him or her
20 as exempt?

21 A. I don't believe so.

22 Q. In determining whether a TCR I
23 is exempt, what consideration does GEICO
24 give to the past experience that person
25 has in claims handling?

1 J. PHAM

2 A. I don't believe we do.

3 Q. In determining whether a TCR II
4 is classified as exempt, what
5 consideration does GEICO give to the past
6 experience in claims?

7 A. I don't believe we give any.

8 Q. In determining whether a TCR I
9 is exempt, what consideration does GEICO
10 give to the competence of that particular
11 TCR I in performing his or her duties?

12 A. I'm not sure I understand that.
13 Can you repeat that?

14 Q. I will rephrase it.
15 In determining whether a TCR I
16 is exempt, what consideration does GEICO
17 give to the performance evaluations that
18 that particular TCR I receives?

19 A. In determining whether or not
20 they are exempt, I don't believe any.

21 Q. And how about for TCR II?

22 A. The same thing.

23 Q. Are there any variations from
24 TCR I to another TCR I that are material
25 to the determination of exempt status

1 J. PHAM

2 other than if they work in California or
3 if they are in orientation?

4 A. I don't believe so.

5 MS. RUDICH: I'm going to ask
6 that this next document be marked as Pham
7 Exhibit 6.

8 (Pham Exhibit 6 marked for
9 identification.)

10 Q. Mr. Pham, I ask that you review
11 what has been marked as Exhibit 6.

12 (Witness perusing document.)

13 MS. RUDICH: Exhibit 6 is a
14 three-page document. It is a performance
15 review of 2007 for Candace Harper dated
16 February 8th, 2008, and it has the Bates
17 stamp numbers 61 through 63, GEICO.

18 (Witness perusing document.)

19 Q. Mr. Pham, have you had a chance
20 to review what's been marked as Pham
21 Exhibit 6?

22 A. Yes.

23 Q. Have you ever seen this
24 document before?

25 A. Yes.

1 J. PHAM

2 Q. What is it?

3 A. It appears to be a performance
4 appraisal for Candace Harper.

5 Q. It is dated February 8th, 2008,
6 correct?

7 A. Yes.

8 Q. What was your position on
9 February 8th, 2008?

10 A. Assistant vice president of
11 Claims for Region II.

12 Q. Do you see on this document, on
13 page 1, there is a list of items, file
14 quality, customer service, BI settlements,
15 completed all features, and completed BI
16 features?

17 A. Yes.

18 Q. What are these?

19 A. These are the goals that
20 Candace Harper had for 2007, it looks
21 like.

22 Q. So file quality is a goal
23 specific to Candace Harper?

24 A. This would have been the
25 goals -- yes, specific to Candace Harper.

1 J. PHAM

2 Q. So if there was another TCR in
3 your office in 2008, it might not say
4 "file quality" on their performance
5 review?

6 A. No, the goals should have been
7 the same for all TCR II's in Woodbury, in
8 Region II, during 2007.

9 Q. So these goals, file quality,
10 customer service, BI settlements,
11 completed all features, and completed BI
12 features, are the same for all TCR II's?

13 A. Yes, they should have been.
14 Supervisors have the ability to add goals
15 if they would like for specific
16 individuals, but we would have known about
17 them.

18 Q. But these are the same?

19 A. Generally, yes, these would be
20 the same for every TCR II in Woodbury.

21 Q. But in a different office, they
22 might be different?

23 A. Yes.

24 Q. Are they different?

25 A. I don't know.

1 J. PHAM

2 Q. Where did the Woodbury office
3 come up with these five goals?

4 A. The managers for the TCR II
5 unit would have decided on these goals in
6 2006.

7 Q. But when you say -- did they
8 come up with this on their own or is it a
9 corporate --

10 A. They would have come up with it
11 on their own.

12 Q. And the weight given for each
13 of the goals, is that the same weight
14 that's given for all TCR II's?

15 A. In Woodbury, yes.

16 Q. And the goal is the same?

17 A. In Woodbury, yes, it should
18 have been the same for all TCR II's.

19 Q. Did you use the same form of a
20 performance review for all TCR II's in
21 Woodbury in 2008? I'm not talking about
22 the substance on this, I'm just talking
23 about the form.

24 A. No. There is an official
25 performance appraisal form. Supervisors

1 J. PHAM

2 will vary whether they use the templated
3 form or type their own performance
4 appraisal.

5 Q. So there is a template form?

6 A. The templated form, it looks
7 like you can see it addressed on page 2 of
8 the comment, the D91 is the templated
9 form.

10 Q. And it is Bates stamped GEICO
11 63?

12 A. GEICO 62. Where it says "D91,
13 Associate Comments," at the top. The D91
14 I believe is the performance appraisal
15 form.

16 Q. What about GEICO 63?

17 A. GEICO 63 is part of the D91, I
18 believe. It may have been reproduced or
19 typed in a different format.

20 Q. Is the D91 a corporate-wide
21 form?

22 A. Yes.

23 Q. So it is generated from the
24 headquarters?

25 A. Yes.

1 J. PHAM

2 Q. It is not something that
3 Woodbury generates?

4 A. Right, we don't generate our
5 own forms. Some supervisors will type
6 their own PAs and then attach them to the
7 form and file them that way. Some will
8 cut and paste into the forms.

9 MS. RUDICH: I will ask that
10 this next document be marked as Exhibit 7.
11 It is a one-page document bearing Bates
12 stamp number GEICO 78. It has "Candace
13 Harper" on the top. It is some type of a
14 chart.

15 (Pham Exhibit 7 marked for
16 identification.)

17 Q. Mr. Pham, are you finished
18 reviewing this?

19 A. Yes.

20 Q. Have you ever seen this before,
21 a document like this before?

22 A. No.

23 Q. Do you know what it is?

24 A. No. It looks like -- I would
25 be guessing if I answered. My guess would

1 J. PHAM

2 be it is something that the supervisor, or
3 a supervisor, created to track their
4 associate's activity.

5 Q. So this is not something --
6 this is not a GEICO template or form?

7 A. No.

8 Q. I'm just going to ask you some
9 questions. What are SPRs?

10 A. SPR is a self-performance
11 review.

12 Q. And what is a self-performance
13 review?

14 A. Generally it is a review of a
15 file done by a supervisor.

16 Q. And what's monthly compliance
17 percentage?

18 A. I don't know.

19 Q. If you go down the left-hand
20 column where it says "payment TIP
21 percentage," do you know what that stands
22 for?

23 A. TIP generally stands for time
24 in process, but I have no idea about that.

25 Q. What is time in process?

1 J. PHAM

2 A. Time in process is a general
3 thing that we use to measure how quickly
4 things are done. But payment time in
5 process is not familiar to me.

6 Q. All the way down on the bottom
7 of the left-hand column where it says
8 "average NBS fee pending," do you know
9 what that is?

10 A. This looks to be -- see, that's
11 a clue. NBS is a feature that we used in
12 PIP, No-Fault, delineating a claim where
13 we have received a suit from a provider or
14 someone.

15 Q. Does NBS stand for something?

16 A. No. It stands for no-fault
17 benefit suit, I think. I'm not sure.

18 But we use the NBS feature to
19 keep track of the suits that we receive on
20 PIP claims when we have denied a bill for
21 not being medically necessary or
22 reasonable and someone is contesting it.

23 Q. On the very bottom, in little
24 letters, it says "average biweekly mail
25 count." Do you know what that means?

1 J. PHAM

2 A. No.

3 Q. Have you ever heard of the term
4 "TCR orientation goals"?

5 A. Yes.

6 Q. What are they?

7 A. I believe they would be the
8 goals that TCR I's or TCR II's have during
9 the orientation period.

10 Q. And are these goals the same
11 throughout GEICO?

12 A. No.

13 Q. How are they different?

14 A. They would differ based on the
15 location.

16 Q. And how were they different?

17 A. I'm not sure, based on each
18 individual region sets their own goals, so
19 I wouldn't know necessarily how they are
20 all different. I'm not even sure I would
21 know what our orientation goals are.
22 Generally they are a subset of what the
23 regular goals are.

24 Q. So there are regular goals?

25 A. Well, the goals, for example,

1 J. PHAM

2 in the exhibit that you gave, Exhibit 6,
3 you have goals there. Generally the
4 orientation goals would be something akin
5 to those. Generally they are the same
6 categories for a given year, they may be
7 with lower expectations on the same goals.

8 MS. RUDICH: I'm going to ask
9 that this next document be marked as Pham
10 Exhibit 8. It is a one-page document
11 entitled "TCR II Orientation Goals, 2004,"
12 and it has GEICO Bates stamp 149.

13 (Pham Exhibit 8 marked for
14 identification.)

15 Q. Have you ever seen this
16 document before?

17 A. No.

18 Q. Is this a company document?

19 A. No. This would have been --
20 this looks to have been the orientation
21 goals in I would guess Woodbury for TCR II
22 in 2004.

23 Q. And how do you know that it is
24 just limited to Woodbury?

25 A. Because it appears to have

1 J. PHAM

2 Carol Vilar's signature on it, and Candace
3 Harper's. And the orientation would
4 differ based on the location and the time
5 frame.

6 Q. You never saw this document
7 before?

8 A. Correct.

9 Q. Have you ever seen orientation
10 goals, TCR II orientation goals, for
11 different regions?

12 A. Yes.

13 Q. You have?

14 A. Yes.

15 Q. But you haven't seen the one
16 for your region?

17 A. Right, I haven't seen -- I have
18 seen them over different time periods.
19 For example, when I was a TCR II, I saw
20 orientation goals. They weren't this.

21 Q. I understand that.

22 But could it have been -- could
23 GEICO itself have made different
24 orientation goals from the time that you
25 were a TCR II?

1 J. PHAM

2 A. Who at GEICO?

3 Q. The home office.

4 A. The home office doesn't set
5 goals.

6 Q. How do you know that?

7 A. Because I set goals, my manager
8 sets goals, because the appraisal of
9 performance is left up to the supervisors
10 and managers in that location.

11 Q. I understand you set the
12 specific number for the goals. But what
13 about the items in the goals?

14 A. The categories in the goals are
15 generally set as well or have been set as
16 well by managers and supervisors.

17 Q. So the categories and goals are
18 not set by the GEICO home office?

19 A. Correct.

20 Q. They are set by the region
21 office?

22 A. Yes. And we are moving to now
23 -- at this time, in 2004, they were set by
24 all the original regions. We would like
25 to and are in the process of moving our

1 J. PHAM

2 goals to be more consistent between the
3 regions, just the categories.

4 Q. Have you ever seen any
5 documents that come out of GEICO home
6 office that sets forth the categories that
7 should be listed on the goals for a
8 specific position?

9 A. Not until probably late 2009,
10 for TCR II positions.

11 Q. How about for TCR I?

12 A. Same thing.

13 Q. So in late 2009 you saw a
14 document come out -- you saw this
15 document?

16 A. Yes. Through the Liability
17 directors, they have been working through
18 what the potential goals might look like.

19 Q. Consistent throughout the
20 company?

21 A. Right, categories.

22 Q. Categories?

23 A. Yes. Those goals, I have not
24 seen any orientation goals. I have only
25 seen regular goals.

1 J. PHAM

2 Q. And what documents have you
3 seen related to these?

4 A. I have seen the categories that
5 would have said these are the categories,
6 these are the core metrics that we would
7 like to measure everyone.

8 Q. And did you see these on Genie?

9 A. No.

10 Q. These were an actual piece of
11 paper?

12 A. Yeah, these would have been
13 pieces of paper.

14 Q. Do you have your own copies of
15 these?

16 A. I'm sure I do somewhere, yeah.

17 MS. RUDICH: I'm going to ask
18 that this next document be marked as Pham
19 Exhibit 9. It is a one-page document
20 entitled "TCR II Goals, 2004," and it has
21 GEICO 150.

22 (Pham Exhibit 9 marked for
23 identification.)

24 Q. Have you ever seen this
25 document before today, Mr. Pham?

1 J. PHAM

2 A. No.

3 Q. Do you know what it is?

4 A. It looks to be the goals for
5 TCR II in Woodbury in 2004.

6 Q. And the categories would be for
7 all TCR II's in Woodbury?

8 A. Yes.

9 Q. And what does NY stand for?

10 A. New York.

11 Q. What does NE stand for?

12 A. I think it stands for New
13 England in this context.

14 Q. Was New England part of Region
15 II?

16 A. In 2004, yes.

17 Q. What does SERT stand for?

18 A. I don't know. I think it
19 stands for certification, but I'm not sure
20 that makes sense.

21 Q. What does TELE stand for?

22 A. I have no idea. I would say
23 telephone, but I'm not sure that makes
24 sense either.

25 Q. And WGT?

1 J. PHAM

2 A. I believe that stands for
3 weight.

4 Q. Now, BI settlements is bodily
5 injury settlements?

6 A. Yes.

7 Q. What does "pending control"
8 mean?

9 A. Pending control is another term
10 for closure ratio. In other words, if you
11 start with a pending of 100 files and you
12 receive two files during the month, if you
13 close two files, even if it wasn't the
14 same files, you would have a pending at
15 the end of the month of 100 and your
16 pending control would be 100 percent.

17 Q. And what's CWP's and drops?

18 A. I think CWP in this context, I
19 believe it means closed without payment.

20 And I believe drops in this
21 context means bodily injury attorneys
22 dropping claims and indicating they no
23 longer wished to pursue it.

24 Q. And what is CPR results?

25 A. I don't know.

1 J. PHAM

2 Q. What is SPR results?

3 A. SPR should be service
4 performance review, and the reviews done
5 by the supervisor.

6 Q. And what does SIU refer to?

7 A. SIUs are Special Investigation
8 Unit, which investigates questionable
9 claims or claims that the examiner
10 believes is fraudulent. And when the
11 examiner decides that this claim may have
12 some elements of fraud, they would refer
13 the case to SIU.

14 MS. RUDICH: I'm going to ask
15 that this next document be marked as Pham
16 Exhibit 10. It is a one-page document
17 entitled "TA2 Examiner Goals, 2007," GEICO
18 148.

19 (Pham Exhibit 10 marked for
20 identification.)

21 Q. Have you ever seen this
22 document before?

23 A. Yes, I believe I have.

24 Q. What is it?

25 A. This would be the TA2 goals in

1 J. PHAM

2 Woodbury for 2007.

3 Q. What would you call this
4 document? If you had to refer to it, if
5 you were asking someone for it, what would
6 you call it?

7 A. I would call this Woodbury's
8 TA2 goals for 2007.

9 Q. Now, do all offices throughout
10 GEICO set TA goals?

11 A. Yes.

12 Q. They might be different, but
13 they all do that?

14 A. Yes.

15 Q. Was it a corporate policy to
16 give or to provide these goals to TA2
17 examiners in 2007?

18 A. Yes. We wanted to make sure
19 everybody is aware of their goals at the
20 start of the year.

21 Q. Where it says "file quality,"
22 do you see that category?

23 A. Yes.

24 Q. It says "As measured by
25 supervisors, Regional Audit Team, CHO, or

1 J. PHAM

2 any other independent reviews."

3 What does that mean?

4 A. In 2007, we had -- these are
5 the different entities that might conduct
6 a review of a file.

7 Q. And what is a Regional Audit
8 Team?

9 A. In 2007, we had some
10 individuals whose job was specifically to
11 review files in Claims for file quality.

12 Q. And that would just be within
13 Region II?

14 A. Yes.

15 Q. And did all regions have that
16 in 2007?

17 A. No.

18 Q. Why did Region II decide to do
19 that?

20 A. I was not in the region at the
21 time the decision was made. I understand
22 that the region made the decision to form
23 an audit team because we thought that it
24 would help improve our quality.

25 Q. Now, what is a supervisor

1 J. PHAM

2 review?

3 A. That would be an SPR that we
4 referred to there. It is the supervisor
5 reviewing a file after it has been closed.

6 Q. Now, do supervisors review all
7 files -- do supervisors review files in
8 all offices throughout GEICO?

9 A. In most, yes. I wouldn't say
10 all. They should.

11 Q. Is it part of corporate policy
12 to have supervisors review files?

13 A. I'm not certain it is corporate
14 policy, but yes, it is our expectation
15 that supervisors review some files from
16 their examiners.

17 Q. In all Claims offices
18 throughout the country?

19 A. Yes. We would like supervisors
20 to review a minimum of two files per
21 examiner per month.

22 Q. And that's a corporate policy?

23 A. I wouldn't say it is a policy
24 as much as it is an understanding.

25 Q. It is a corporate

1 J. PHAM

2 understanding?

3 A. Yes.

4 Q. For all offices, no matter what
5 state or region, except maybe California?

6 A. Correct.

7 Q. What is CHO?

8 A. CHO stands for Claims Home
9 Office.

10 Q. Is there a Claims Home Office?

11 A. Yes.

12 Q. Where is that?

13 A. Washington, D.C., at the
14 corporate headquarters.

15 Q. Does the Claims Home Office set
16 forth any policies regarding how a claim
17 should be handled?

18 A. Yes.

19 Q. And what are those policies?

20 A. That would be the claims manual
21 that is kept up to date by them.

22 Q. Do all Claims offices
23 throughout the country use the same claims
24 manual?

25 A. Yes, generally.

1 J. PHAM

2 Q. And that's a corporate document
3 that is generated out of the Washington,
4 D.C. Claims Home Office?

5 A. Yes.

6 Q. And is that the manual in
7 which -- what's the purpose of this
8 manual?

9 A. Well, the manual gives
10 guidelines on how the company would like
11 coverage, liability, and damages
12 investigated, the steps to follow to be
13 able to do a good coverage investigation
14 and to be able to come to the right
15 decision as to coverage, liability, and
16 damages.

17 Q. And this applies for all Claims
18 offices for GEICO?

19 A. Yes.

20 Q. And I'm assuming maybe even
21 California they want to do it?

22 A. Yes, we would like that, yes.

23 Q. Is each claims examiner given
24 their own copy of the claims manual or is
25 it for the office?

1 J. PHAM

2 A. No, I believe it is online.

3 Q. Does the Claims Home Office
4 provide any uniform training for claims
5 examiners after the orientation?

6 A. Specific to which position?

7 Q. Specific to the TCR I and II.

8 A. Yes. From time to time, Claims
9 Home Office comes out with different
10 training items, most of which are
11 voluntary, some of which may be mandatory
12 based on new developments in law or other
13 processes or procedures.

14 Q. And these mandatory or
15 voluntary training, are these uniform
16 throughout the country?

17 A. Yes. If they are produced by
18 Claims Home Office, it is the same
19 material, yes.

20 Q. So any TCR I or TCR II in any
21 office would be taking the same training
22 course if it came out of the CHO?

23 A. Yes.

24 Q. Is there any type of
25 requirement for a TCR I or II to take a

1 J. PHAM

2 certain amount of training courses per
3 year?

4 A. No.

5 Q. Where it says "Customer service
6 VM and A-call audits," what is that?

7 A. I believe VM is voice mail.
8 And A-call would be a monitoring of the
9 call to determine if the customer
10 transaction was good.

11 Q. And who would monitor the call?

12 A. Supervisors. I believe in 2007
13 there were other people doing voice mail
14 audits. And a voice mail audit would just
15 be checking to see you got a voice mail
16 message, did you return it timely.

17 Q. We have heard the term
18 "features" and we have seen the word
19 "features." What are features in this
20 context?

21 A. In the context of claims at
22 GEICO, a feature is really the method by
23 which examiners open and set reserves for
24 payment of claims. So when you open a
25 feature, it is something that has to be

1 J. PHAM

2 done in the system. And opening the
3 feature sets aside a loss reserve for
4 future payment on the claim.

5 Q. Are the features dependent upon
6 the state law?

7 A. Yes, some of the features vary
8 by state and some of the features vary by
9 coverage. So we have different features
10 for different coverages and in different
11 states.

12 Q. So all claims examiners in a
13 specific state would have the same
14 features that they could open or close,
15 correct? Let me phrase it a different way
16 to make it easier.

17 All TCR I's or II's within a
18 specific state could have the same
19 features that they could open?

20 A. All TCR I's and II's basically
21 would have the same pool of features, of
22 which they would have to decide which ones
23 were appropriate to open.

24 Q. But they are given the same
25 options?

1 J. PHAM

2 A. Yes. As long as the coverage
3 is available, which the TCR I's and TCR
4 II's have to determine, they can open a
5 feature associated with that coverage in
6 that state. So within each claim, the
7 features may be different depending on the
8 loss state and the risk state.

9 Q. But I'm just saying that TCR
10 I's and TCR II's within a region would
11 have the same ability to open up the same
12 features if they are working on the same
13 type of claims?

14 A. Yes, generally, yes.

15 Q. And is this part of the Claims
16 IQ program?

17 A. No, this is not part of Claims
18 IQ.

19 Q. Is there a program in which
20 they would do this?

21 A. It is just generally the claims
22 system.

23 Q. Is this claims system the same
24 throughout the country?

25 A. Yes.

1 J. PHAM

2 Q. So all offices use the same
3 claims system?

4 A. Yes.

5 Q. Does it have a name?

6 A. I believe it is called CRIS,
7 and I don't know what that stands for. It
8 is in the process of being replaced now.

9 Q. So all Claims offices
10 throughout the country use CRIS?

11 A. Yes.

12 MS. RUDICH: I'm going to ask
13 that this next document be marked as Pham
14 Exhibit 11. It is a one-page document
15 entitled "TA2 Examiner Goals, 2008," and
16 it has the Bates stamp number GEICO 147.

17 THE WITNESS: Can I take a
18 quick break?

19 MS. RUDICH: Of course.

20 (Recess taken.)

21 (Pham Exhibit 11 marked for
22 identification.)

23 BY MS. RUDICH:

24 Q. Exhibit 11, have you ever seen
25 this before?

1 J. PHAM

2 A. Yes.

3 Q. What is this?

4 A. This would be the Woodbury TCR
5 II examiner goals for 2008. I think I
6 know what CPR means. In this context, it
7 is Claims Home Office performance review.

8 Q. Is there a specific percentage
9 of claims files that the Claims Home
10 Office audits each year?

11 A. No, there is not a specific
12 percentage. It is a very, very low
13 percentage that they audit. They
14 generally will try and do, I think --
15 well, in TCR II, for example, they may do
16 50 files of the thousands and thousands.

17 Q. Now, I'm just going to look
18 across where it says "CPR audit." It says
19 "no S." What does that mean?

20 A. In an audit, in any audit, S
21 would be satisfactory, NS would be
22 nonsatisfactory.

23 Q. Now, is 5 the highest number
24 you could get for these specific
25 categories?

1 J. PHAM

2 A. Right, 5 would be the highest
3 rating in any category and 1 would be the
4 lowest.

5 Q. So it goes from 1 to 5?

6 A. Correct.

7 Q. So if you go across the CPR
8 audit to the 5 column, where it says no
9 nonsatisfactories and four satisfactories,
10 is that what that means?

11 A. Yes.

12 Q. What does 1Q PRT stand for?

13 A. I believe that stands for
14 Performance Review Team. I believe that
15 would be the regional Performance Review
16 Team. Only Woodbury had that in 2008.

17 Q. And 1Q stands for first
18 quarter?

19 A. That's correct.

20 Q. And S means satisfactory and NS
21 means nonsatisfactory?

22 A. That's correct.

23 Q. The supervisor SPR audits are
24 the audits that the individual supervisor
25 does?

1 J. PHAM

2 A. Yes.

3 Q. What is a CIQ audit?

4 A. That would have been a Claim IQ
5 audit.

6 Q. What is a Claim IQ audit?

7 A. That is the supervisor going in
8 and looking at the claim and making sure
9 that the tool was used in order for the
10 examiner to make their decisions on a
11 claim.

12 Q. Does the Claims Home Office
13 give any guidelines as to how many CIQ
14 audits a supervisor has to do?

15 A. No.

16 Q. That's just something that each
17 office would come up with?

18 A. That's correct.

19 Q. What are ARX?

20 A. ARX are Auto Repair Express
21 Program.

22 Q. And what is that?

23 A. It is a fantastic program that
24 we offer for when people are involved in
25 accidents. What happens is you have the

1 J. PHAM
2 right to have your vehicle repaired
3 anywhere you want when you have an
4 accident. But if you are eligible for it,
5 if the examiner has determined we are in
6 fact going to make payment on the claim,
7 and if you are an insured with us and you
8 have rental coverage, then you are
9 eligible for the program.

10 What it is, you would show
11 up -- you would express interest in the
12 program and you would show up -- we would
13 set up an appointment for you at a body
14 shop, and you would go to the body shop
15 and our adjuster would be at the body shop
16 as well as Enterprise Rent-A-Car at the
17 body shop.

18 When you get there, repairs on
19 your vehicle would start right away.
20 Enterprise and the shop would be waiting
21 for you. You would come in. It takes all
22 the frustration out of repairing your
23 vehicle. You would get in the rental car
24 right away. We would call you when the
25 repairs are done, and you would get your

1 J. PHAM

2 car back lickety-split with a guarantee on
3 your car for the repairs.

4 Q. Now, is this ARX Express, Auto
5 Repair Express, a company-wide program or
6 is it a regional program?

7 A. It is a company-wide program.

8 Q. Are audits performed the same
9 way for all offices?

10 A. Generally the Claim Home Office
11 performance review is conducted the same
12 way. The other audits, the SPRs should
13 mirror the Claims Home Office performance
14 review criteria. Like a Claim IQ audit
15 would be specific to a location. A voice
16 mail audit or any other type of review
17 would be specific to that location.

18 Q. Just so I'm clear, so the
19 Claims Home Office performance review is
20 conducted the same way regardless of the
21 office in which they are doing the audit?

22 A. Yes.

23 Q. And the SPR review should also
24 mirror the uniform Claims Home Office
25 review, correct?

1 J. PHAM

2 A. Yes. We would like it to.

3 Q. So that should be done the same
4 way regardless of the office?

5 A. Yes.

6 Q. Now, do all employees within
7 the same job title get the same employee
8 handbooks?

9 A. Yes, I believe so.

10 Q. Does GEICO have a central
11 hiring department for TCR I's and II's?

12 A. No.

13 Q. So they are done on a regional
14 basis?

15 A. Yes.

16 Q. So if your office needs to fill
17 a TCR I position, your office would handle
18 that?

19 A. Yes. If we need to fill a TCR
20 I position, we generally will post the job
21 internally first. We always like to hire
22 from the inside first. If we don't have
23 enough candidates to fill positions from
24 the inside, then they would look outside
25 and do that ourselves.

1 J. PHAM

2 Q. So you don't have to go to the
3 Washington, D.C. office and say "I need
4 this position filled" and they handle it?

5 A. No.

6 Q. Does GEICO have company-wide
7 policies regarding the hiring or firing
8 of -- let me split that up.

9 Does GEICO have a company-wide
10 policy regarding the hiring of TCR I's?

11 A. For TCR I's, I don't believe we
12 do.

13 Q. How about for TCR II's?

14 A. I don't believe we do. It
15 would be rare that we would ever hire TCR
16 II's from the outside.

17 Q. They are usually promoted
18 within?

19 A. Correct.

20 Q. Are all TCR I's entitled to
21 participate in the same general health
22 plans?

23 A. Yes.

24 Q. And are all TCR II's entitled
25 to participate in the same general health

1 J. PHAM

2 plans?

3 A. Yes.

4 Q. Are TCR I's entitled to

5 participate in a 401(k) program?

6 A. Yes.

7 Q. And are all TCR I's entitled to

8 participate in the same 401(k) program?

9 A. Yes.

10 Q. And how about TCR II's, do they

11 participate in the same 401(k) program?

12 A. Yes.

13 Q. And do they participate in the

14 same 401(k) program that TCR I's

15 participate in?

16 A. Yes.

17 Q. Has the United States

18 Department of Labor ever investigated

19 GEICO for wage and hour purposes?

20 A. I don't believe so.

21 Q. Has the New York State

22 Department of Labor ever investigated

23 GEICO for wage and hour purposes?

24 A. I don't believe so.

25 Q. Has GEICO ever engaged in any

1 J. PHAM

2 time studies of what TCR I's do?

3 A. No.

4 Q. How about for TCR II's?

5 A. No.

6 Q. Are you aware of any other
7 lawsuits that have ever been brought
8 against GEICO for wage and hour violations
9 for TCR I's or II's?

10 A. No.

11 Q. You are not aware of them?

12 A. I'm not aware of any.

13 Q. There could have been, but you
14 just don't know?

15 A. I don't believe there were any.

16 Q. What payroll software does
17 GEICO use?

18 A. We have our own payroll
19 software.

20 Q. And what is that?

21 A. I don't know what it is.

22 Q. Is there a name for it?

23 A. Well, our payroll system is
24 called ETAS, Electronic Time and
25 Attendance System. We use PeopleSoft as

1 J. PHAM

2 our general HR software. I don't know if
3 that's what processes the payroll or not.
4 It could be a proprietary system that we
5 developed.

6 Q. Since May of 2003, have TCR I
7 and II's, have they been classified as
8 exempt under the FLSA?

9 A. I believe so.

10 MS. RUDICH: Just give me a
11 minute.

12 (Recess taken.)

13 MS. RUDICH: I have nothing
14 further.

15 MR. HEMMENDINGER: I have a
16 couple of questions.

17 EXAMINATION BY MR. HEMMENDINGER:

18 Q. John, take a look at Pham 5,
19 please. Where it says under one of these
20 bullet points "may settle PIP and/or
21 medical claims," and above that it talks
22 about BI settlements, can you explain the
23 difference between BI and medical claims?

24 A. BI is bodily injury,
25 third-party coverage. I believe medical

1 J. PHAM

2 claims refer to first-party medical
3 claims, which would be in some states they
4 have personal injury protection as a
5 coverage and in some states they have
6 MedPay as a coverage. That's what the
7 difference would be.

8 Q. Pham 8, if you would take a
9 look at that. Look at item 3 at the very
10 top.

11 A. Yes.

12 Q. Does that refresh or bring to
13 mind anything about the application of
14 where this document is used?

15 MS. RUDICH: Objection. You
16 could answer.

17 Q. You could go ahead and answer.

18 A. Yes. Because it says "Region
19 II states," it would have been used at
20 this time in 2004, Region II was not only
21 responsible for New York, but was also
22 responsible for all the New England
23 states. So there would be different BI
24 threshold rules or laws that the TCR II's
25 would need to learn and be able to apply

1 J. PHAM

2 and make decisions on.

3 Q. You mentioned Claims Home
4 Office being located in Washington, D.C.
5 do you know whether it is actually in
6 Washington or Maryland?

7 A. It is in our Chevy Chase,
8 Maryland office, which is on the border of
9 Washington, D.C., and it has two
10 addresses, one in Washington and one in
11 Chevy Chase. So they are used
12 interchangeably at times. Sorry about
13 that.

14 Q. You talked about the TCR I's
15 and the TCR II's both using the CRIS
16 system to open features, right?

17 A. Yes.

18 Q. Would the TCR I's and the TCR
19 II's be using all of the same features?

20 A. Not necessarily. The TCR II's
21 would be the only ones using the BI
22 features.

23 Q. You were asked some questions
24 in which you did not know the answers
25 about the history of the classification of

1 J. PHAM

2 the TCR I and TCR II jobs as nonexempt
3 from overtime.

4 Prior to this deposition, did
5 you participate in the preparation of
6 answers to interrogatories in this case?

7 A. Yes, I did.

8 Q. Was that topic covered in those
9 answers to interrogatories?

10 A. I believe so.

11 MR. HEMMENDINGER: That's all I
12 have.

13 MS. RUDICH: I just have one
14 follow-up question.

15 EXAMINATION BY MS. RUDICH:

16 Q. How many features in total are
17 there in the Claims IQ?

18 A. Under Claims IQ, features
19 aren't under Claims IQ.

20 Q. Features aren't part of Claims
21 IQ?

22 A. No, features are in the CRIS
23 system, in the claims system.

24 Q. How many total features are
25 there in all in CRIS?

1 J. PHAM

2 A. I don't know. There is a lot
3 of them.

4 Q. Is it more than 50?

5 A. Probably, yes.

6 Q. And how many features do TCR
7 I's have access to?

8 A. They would have access to
9 essentially all of them if a loss
10 occurred, depending on the loss state or
11 risk state.

12 So, in other words, if you had
13 a New York loss, which is handled in the
14 New York office, but there was a different
15 risk state, different features may apply
16 because of the different coverages
17 afforded to the first party under that
18 state.

19 Q. How many CRIS features would a
20 TCR II have access to?

21 A. The same amount.

22 Q. Is that the same in every
23 claims office throughout the country?

24 A. Yes.

25 MS. RUDICH: No further

1 J. PHAM

2 questions.

3 MR. HEMMENDINGER: I want to
4 add something for the record before we go
5 off the record.

6 MS. RUDICH: Sure.

7 MR. HEMMENDINGER: The witness
8 wouldn't be in a position to know this
9 necessarily, but I want to make the record
10 clear, GEICO has had one encounter with
11 the Department of Labor concerning its
12 jobs. It concerned the auto damage
13 adjuster job, which at that time was
14 called material damage adjuster.

15 It was sued by the Department
16 of Labor in the United States District
17 Court in Maryland, and the company won the
18 case, in 1978.

19 MS. RUDICH: Okay, that is
20 fine. There wasn't any other lawsuits
21 brought?

22 MR. HEMMENDINGER: Concerning
23 TA I or II, no.

24 MS. RUDICH: How about for any
25 other claim?

1 J. PHAM

2 MR. HEMMENDINGER: Well, we
3 have had a lot of claims on the auto
4 damage adjusters.

5 MS. RUDICH: These are the auto
6 adjusters?

7 MR. HEMMENDINGER: Yes.

8 MS. RUDICH: None for the
9 claims examiners?

10 MR. HEMMENDINGER: We never
11 before had a claim that the inside
12 adjusters, the telephone-type adjusters or
13 examiners, were misclassified as exempt
14 from overtime.

15 (Continued on the next page.)
16
17
18
19
20
21
22
23
24
25

1 J. PHAM

2 MS. RUDICH: We can go off the
3 record.

4
5 [TIME NOTED: 1:01 p.m.]
6
7
8
9

10
11
12
13
14 _____
15 JOHN W. PHAM

16 _____
17 Subscribed and sworn to
18 before me this _____
19 day of _____, 2010.

20 _____
21 Notary Public
22
23
24
25

I N D E X

| WITNESS | EXAMINATION BY | PAGE |
|---------|----------------|--------|
| PHAM | RUDICH | 3, 124 |
| | HEMMENDINGER | 121 |

E X H I B I T S

| PHAM | DESCRIPTION | PAGE |
|------------|----------------------|------|
| Exhibit 1 | Notice of Deposition | 8 |
| Exhibit 2 | GEICO 00277 | 52 |
| Exhibit 3 | GEICO 00248 | 54 |
| Exhibit 4 | GEICO 00254 | 58 |
| Exhibit 5 | GEICO 00255 | 62 |
| Exhibit 6 | GEICO 00061-00063 | 85 |
| Exhibit 7 | GEICO 00078 | 90 |
| Exhibit 8 | GEICO 00149 | 94 |
| Exhibit 9 | GEICO 00150 | 98 |
| Exhibit 10 | GEICO 00148 | 101 |
| Exhibit 11 | GEICO 00147 | 111 |

DIRECTIONS NOT TO ANSWER

Page Line
(NONE)

REQUESTS

Page Line
(NONE)

1
2 CERTIFICATION

3
4 I, TODD DeSIMONE, a Notary Public for
5 and within the State of New York, do
6 hereby certify:

7 That the witness whose testimony as
8 herein set forth, was duly sworn by me;
9 and that the within transcript is a true
10 record of the testimony given by said
11 witness.

12 I further certify that I am not related
13 to any of the parties to this action by
14 blood or marriage, and that I am in no way
15 interested in the outcome of this matter.

16 IN WITNESS WHEREOF, I have hereunto set
17 my hand this 24th day of March, 2010.
18
19

20 _____
TODD DESIMONE

21
22 * * *
23
24
25

CASE NAME: HARPER V. GEICO
DATE OF DEPOSITION: 3/24/10
WITNESS' NAME: JOHN W. PHAM

JOHN W. PHAM
SUBSCRIBED AND SWORN TO
BEFORE ME THIS _____ DAY
OF _____, 2010.

(212) 490-3430